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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 13

RETAIL CLERKS INTERNATIONAL ASSOCIATION, Local 1625, AFL-CIO, and WILLIAM TRAVIS, president of Retail Clerks International Association, Local 1625,
*Petitioners*

v.

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THURO and LARRY STARK,
*Respondents*

**On Writ of Certiorari to the Supreme Court of the State of Florida**

## MOTION OF CHAMBER OF COMMERCE OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

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## MOTION OF CHAMBER OF COMMERCE OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Chamber of Commerce of the United States respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*.

Attorneys for the petitioners and the respondents have declined to consent to the filing of a brief by the Chamber of Commerce as *amicus curiae*.

The legal issue before the Court, however, is of tremendous importance to the business community of the

United States. The Chamber of Commerce is the largest national representative of American employers, with a membership of more than 30,000 business firms, and 3,714 trade and business associations. The National Chamber thus serves as the voice of more than 3,000,000 employers.

The Chamber has an interest in this case because most of its members are engaged in businesses whose activities affect interstate commerce, and are subject to federal laws that affect their employer-employee or employer-union relationship.

This brief is filed because the issue involved here is of widespread significance and of utmost importance to the members of the Chamber of Commerce of the United States. The issue far transcends the activities of a Miami union local of grocery clerks and the employees who do not wish to be forced to support an unwanted organization, because their employer has agreed with this third-party organization that his employees must pay financial tribute to it or give up their employment.

On behalf of the interests of the business community which it represents, the Chamber of Commerce of the United States respectfully moves that the annexed brief *amicus curiae* supporting the judgment herein of the Supreme Court of Florida be received and considered by this Honorable Court.

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**On Writ of Certiorari to the Supreme Court of the State of Florida**

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## I. INTRODUCTION

This brief *amicus curiae* is submitted by the Chamber of Commerce of the United States of America as provided in Rule 42(3) of the Rules of the Supreme Court following a motion for leave to submit such a brief.

## II. INTEREST OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

The Chamber of Commerce of the United States of America is a federation, consisting of a membership of

more than 30,000 business firms and 3,714 state and community chambers of commerce and trade and professional associations. There is an underlying membership of approximately 3,000,000 business organizations.

The National Chamber sets forth the views and opinions of the business community in many fields, including labor-management relations. Although the National Chamber is not directly interested in the behalf of any party to this action, the questions involved herein are of general interest and of utmost concern to the entire business community of the United States.

In particular it is of interest to businesses in those states which regulate or prohibit compulsory unionism and to businesses in those states that are contemplating enactment of legislation in this area. Many businesses for which *amicus* speaks are engaged in interstate commerce or in activities that affect interstate commerce; therefore, they are subject to the various federal labor statutes.

*Amicus* respectfully requests that its brief be considered by this Court.

## III. STATEMENT OF FACTS

This cause stems from the objection of four persons, employed in a Miami, Florida, grocery store operated by Food Fair Stores, Inc., to their employer deducting moneys from their wages to support Local 1625 of the Retail Clerks International Association, a labor union these four employees did not want nor seek to have represent them in collective bargaining or in other matters with their employer. The employer had agreed with the labor union to require all of its employees to financially support the union, regardless of the desires and wishes of the employees.

The four employees relied upon the protection of the constitution of the State of Florida which outlaws union compulsion.[1] The Supreme Court of Florida upheld the contention of the employees, respondents herein. This Court then granted the union's petition for certiorari.

*Amicus curiae* intends to limit its argument to the contention of the petitioner that the National Labor-Management Relations Act, 61 Stat. 151, 29 U.S.C. Sec. 164 (b)[2], does not allow the individual states to enact statutes or constitutional provisions to prohibit what commonly are known as "agency shop" agreements in labor-management contracts.

Petitioner contends that Section 14(b) limits the states to make illegal labor-management contract clauses requiring membership in a labor organization, but that such limitations may not include the compulsory support (agency shop) of a labor organization.

*Amicus* takes the position that Section 14(b) reaffirms the authority of states to outlaw all forms of union compulsion.

## IV. ARGUMENT

### A. The Agency Shop

The term "agency shop" is another of the many sobriquets designed by union officials to avoid the unpopular and dictatorial, but accurate, term "compulsory unionism". Like so many of its trite predecessors—"closed shop", "union shop", "union security", "maintenance of membership"—all are devices to compel an employee to

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[1] Amendment to Section 12 Florida Constitution, Nov. 7, 1944: "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization . . ."

[2] Hereafter called Sec. 14(b).

support a labor organization for which he has no interest, need or desire.

Under an agency shop agreement, an employee is not required to formally become a member of a union in order to hold his job, but he must contribute to the financial support of the union in amounts generally equal to union initiation fees, union dues, and union special assessments required of union members. He is not permitted to participate in union meetings, to vote on matters affecting his employment, or to qualify for union emoluments that may be given to the "faithful".

Did Congress, in the National Labor-Management Relations Act, intend to preclude the states from proscribing agency shop agreements?

The legislative history of Sections 8(3) of the Wagner Act and 8(a)(3) and 14(b) of the Taft-Hartley Act, together with applicable decisions of this Court, dictate a negative answer.

Between the enactment of the Wagner Act in 1935 and the Taft-Hartley Act in 1947, several states had adopted statutes or constitutional amendments against compulsory unionism.

It is clear from their language that all forms of union compulsion—via membership or financial support outside formal membership—was declared to be against the public policy of the State. Congress, of course, was aware that these states clearly sought to protect an employee's right to join a union or to refrain from joining or supporting a union.

The language of these States clearly precludes an agency shop form of compulsion:

> *Arkansas*, ". . . . Nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employ-

ment." (Constitutional Amendment 34, Nov. 7, 1944).

*Virginia*, "No employer shall require any person, as a condition of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization." (Code of Virginia, Sec. 40.72, Jan. 12, 1947).

*Tennessee*, "It shall be unlawful for any person, firm, corporation or association of any kind to exclude from employment any person by reason of such person's payment of or failure to pay dues, fees, assessments, or other charges to any labor union or employee organization of any kind." (Tennessee Code, Sec. 50.210,, Feb. 21, 1947).

*North Carolina*, "No employer shall require any person, as a condition of employment or pay any dues, fees or other charges of any kind to any labor union or labor organization." (Genl. Stats. of North Carolina, Sec. 95-82, Mar. 18, 1947).

*Georgia*, "No individual shall be required as a condition of employment, to pay any fee, assessment, or other sum of money whatsoever to a labor organization." (Georgia Code, Sec. 54-902, Mar. 27, 1947).

*Iowa*, "It shall be unlawful for any person, firm, association, labor organization or corporation . . . either directly or indirectly . . . as a prerequisite to or a condition of employment to require any person to pay dues, charge fees, contributions, fines or assessments to any labor union. . . ." (Iowa Code, Sec. 736A.4, April 28, 1947).

A review of the legislative history of the Taft-Hartley Act indicates, as *amicus* will show, that Congress had no desire whatsoever to interfere or preempt these statutes or constitutional amendments. It is equally clear that these laws prohibited contractual agreements which were later to develop under the title "agency shop".

This was the backdrop before which the Taft-Hartley bills were debated and which later became the law.

## B. Legislative History

The legislative history of the 1947 National Labor-Management Relations Act contains numerous references that clearly indicate the intent of the 80th Congress not to preempt state law in the area of union compulsion.

### (1) *Congressional Reports:*

House Conference Report No. 510 at page 60 specifically illustrates this intent by both houses of Congress:

> "Under the House bill there was included a new section 13 of the National Labor Relations Act to assure that *nothing in the act was to be construed as authorizing any closed shop, union shop, maintenance of membership, or other form of compulsory unionism agreement in any State where the execution of such agreement would be contrary to State law. Many States have enacted laws or adopted constiutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism."*[3] (Italics supplied).

House Report No. 245 (page 40), when explaining Section 10 of H.R. 3020, referred to state control over all types of "union security":

> "As under the present act, the power of the Board [NLRB] under the amended act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision. (Sec. 13 hereafter discussed) to give to the States a concurrent jurisdiction in respect of closed-shop *and other union-security arrangements."*[4] (Italics supplied).

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[3] Vol. 1, Legislative History Labor-Management Relations Act, Page 564.

[4] Vol. 1, Legislative History Labor-Management Relations Act, page 331.

Note the phrase "and other union security arrangements". This leaves no doubt that the legislative intent was to permit the states to ban all deals for union security or union compulsion if the state so wished.

The opponents to the legislation, in their minority views expressed in the same House Report No. 245, agree that the bill would leave authority to cope with union compulsion problems to the individual states. In their discussion of the closed shop and "union security" beginning on page 79 of the report, the minority say on page 81:

> "Contrary to widespread belief, this provision does not legalize or extend the use of union security provisions. In fact, it limited their use by establishing the two requirements set forth above, which did not exist prior to the passage of the act, *the national statute has left the State laws where it found them.*"[5] (Italics supplied).

The original Senate labor bill, S. 1126, contained no specific section concerning the reservation of authority to the states.

Elsewhere in House Report No. 245 on H.R. 3020, it is emphatic that state authority in the area of union compulsion is maintained (page 34):

> ". . . and by section 13 the United States expressly declares the subject of compulsory unionism one that the States may regulate concurrently with the United States, not withstanding that the agreements affect commerce, *and notwithstanding that the State laws limit compulsory unionism more drastically than does Federal law.*"[6] (Italics supplied).

At that time at least nine states already had statutes forbidding compulsory unionism.

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[5] Vol. 1, Legislative History Labor-Management Relations Act, page 372.

[6] Vol. 1, Legislative History Labor-Management Relations Act, page 325.

Again in House Report No. 245 (page 44) there is an explanation of Section 13, the section which later became the present Section 14(b):

> "Section 13.—Since by the Labor Act Congress preempts the field that the act covers insofar as commerce within the meaning of the act is concerned, and since when this report is written the courts have not finally ruled upon the effect upon employees of employers engaged in commerce of State laws dealing with compulsory unionism, the committee has provided expressly in section 13 *that laws and constitutional provisions of any State that restrict the right of employers to require employees to become or remain members of labor organizations are valid, not withstanding any provision of the National Labor Relations Act.* In reporting the bill that became the National Labor Relations Act, the Senate committee to which the bill had been referred declared that the act would not invalidate any such State law or constitutional provision. The new section 13 is consistent with this view."[1] (Italics supplied).

Subsequently, the Senate amended H.R. 3020 by substituting the language of its bill, S. 1126, for the language in H.R. 3020 that had passed the House. When the House disagreed, the two versions went to a joint conference, and the conferees adopted the wording as it now appears in Section 14(b) of the Taft-Hartley Act:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

(2) ***Congressional Debates:***

When the floor debates are examined on 14(b) in both the House and Senate, the same conclusion to protect

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[1] Vol. 1, Legislative History Labor-Management Relations Act, page 335.

the right of states to outlaw all forms of compulsory unionism, if they so wish, is brought out repeatedly.

On April 16, 1947, Rep. Hoffman of Michigan in a speech on the House floor contended that there was no real difference—except "a play on words" between a closed shop and a union shop. To Rep. Hoffman, both spelled COMPULSORY UNIONISM. He sought to offer an amendment that would prevent all forms of compulsory unionism as a national policy. He declared:

> "If we are going to write a labor bill for the benefit of the man who works, then we should amend this section and subsequent sections and provide that any and every man should have the opportunity to work at, when, and where he can find a job."[8]

Rep. Owens of Illinois opposed the Hoffman amendment, and Rep. Halleck of Indiana raised a question about state authority to deal with forced unionism. He asked:

> "Does not the bill recommended by the committee also contain a provision granting to the States authority *to deal with this whole problem* if they so desire?" (Italics supplied).

Rep. Owens replied:

> "Absolutely. *The States can deal with the problem. It does not affect in any way the many States,* that have already acted upon it and others that probably will act upon it. Therefore, I say the amendment offered by the gentleman from Michigan [Hoffman] should be voted down." (Italics supplied.)

The same evidence is found in the Senate debate concerning Section 14(b) and compulsory unionism.

On June 5, 1947, Senator Taft took the floor to explain the principal differences between the Senate's labor bill and the joint conference agreement. He said:

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[8] Vol. 1, Legislative History Labor-Management Relations Act, page 733; Cong. Rec. (daily) (April 16, 1947) page 3612.

"A new subsection has been added to section 14 to make it perfectly clear that nothing in the act is to be construed as authorizing compulsory union membership agreements, in States where the execution or enforcement of such agreements would be contrary to State law. *Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in such states illegal.* As stated in the report accompanying the Senate committee bill, *it was not the intent to deprive the States of such power.* The conferees, therefore, had no objection to the adoption of the House provision to that effect."[9] (Italics supplied).

Senator Taft verbally underlined this explanation in reply to a question by Senator Ball of Minnesota:

"The Senate Committee report stated on its face that *state laws would still remain in effect.* All we have done is to write in expressly what our committee report said."[10] (Italics supplied).

Later the same afternoon, Senator Taft reiterated this. He declared:

"Many states have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in such States illegal. As stated in the report accompanying the Senate committee bill, it was not the intent to deprive the States of such power."[11]

Opponents to the proposed new law also agreed with the majority. Senator Morse of Oregon, attacked the report in a Senate speech the same day, June 5, 1947. Commenting on the question of the union shop and state's rights, he exclaimed:

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[9] Vol. II, Legislative History Labor-Management Relations Act, page 1543; Cong. Rec. (daily) (June 5, 1947) page 6602.

[10] Vol. II, Legislative History Labor-Management Relations Act, page 1546; Cong. Rec. (daily) (June 5, 1947) page 6604.

[11] Vol. II, Legislative History Labor-Management Relations Act, page 1561; Cong. Rec. (daily) (June 5, 1947) page 6613.

> "Thus, we lay down in the bill a very full and complete national policy as to closed and union shop agreements. At the same time, the bill provides in Section 13(b), [*sic*] however, that *the national policy may be entirely disregarded and superseded by the states if they desire to impose a more restrictive policy* on the same subject matter."[12] (Italics supplied).

Senator Murray of Montana, also an opponent of the Taft-Hartley bill, submitted his analysis of Section 14(b):

> "Section 14 in subsection (b) also provides that *nothing in the bill shall be construed as authorizing the execution of any union security agreement in a state in which such agreements are prohibited . . . . Section 14(b), however, expressly provides that in the cases where the state law covering union-security agreements is more rigorous than the policy expressed in the bill such state law shall be unaffected.*"[13] (Italics supplied).

Note particularly that Senator Murray talked of "union security agreements"—not merely union shop or closed shop or maintenance of membership. To today's union officials, the demanded "agency shop" is a form of "union security".

Senator Magnuson of Washington took the same view. On June 6, 1947, he placed in the *Congressional Record* (page 6694 Daily Record) what he considered 36 concessions the Senate made to the House. Among them, he said the new Section 14(b) had the same effect as the original Section 13 of the House bill.

Within the next two weeks the Taft-Hartley bill passed both houses of Congress only to be vetoed by President Truman June 20, 1947. In this message President Tru-

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[12] Vol. II, Legislative History Labor-Management Relations Act, page 1561; Cong. Rec. (daily) (June 5, 1947) page 6613.

[13] Vol. II, Legislative History Labor-Management Relations Act, page 1586; Cong. Rec. (daily) (June 6, 1947) page 6665.

man said he objected to state authority over compulsory unionism. He wrote:

> "The bill's stated policy of preserving some degree of union security would be abdicated in all states where more restrictive policies exist."[14]

The Congress overrode the President's veto, and the Taft-Hartley bill became law.

**C. The Wagner Act**

Although there was a new national policy on labor-management relations, there was no change from the Wagner Act policy in respect to the power of the states to outlaw compulsory unionism. When the Wagner Act was adopted 12 years earlier in 1935, this area of the law was left to the states.

Senator Wagner himself clearly explained he had no intention of interfering with states rights in this field.

When on February 21, 1935, he introduced S.1958, the bill that eventually became the National Labor Relations Act, he offered an accompanying statement which said in part:

> "Equally erroneous is the belief that the bill creates a closed shop for all industry. It does not force any employer to make a closed-shop agreement. It does not even state that Congress favors the policy of the closed shop. *It merely provides that employers and employees may voluntarily make closed shop agreements in any State where they are now legal. Far from suggesting a change, it merely preserves the status quo.*"[15] (Italics supplied).

The Senate Labor Committee, in comparing Senator Wagner's S.1958 with his previously introduced 1934 bill (S.2926), confirmed this:

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[14] Vol. I, Legislative History Labor-Management Relations Act, page 921; Cong. Rec. (daily) (June 20, 1947) page 7503.

[15] Legislative History of the Wagner Act, page 1312; Cong. Rec. (daily) (Feb. 21, 1935) page 2368.

"The proviso in the two drafts are similar in purpose. *They are intended merely to preserve the status quo as to the legality of closed-shop agreements under the common law in the different States,* and to make clear that neither Sec. 7(a) nor any other statute of the United States precludes such agreements . . . .

"The proviso does not make closed shop agreements legal; it merely says that nothing herein should illegalize them. *The operation of State common law on the subject is left unaffected. . .*" (Italics supplied.).

Senator Wagner's purpose was to preserve the right of states to legalize forced unionism.

"Unless this change is made as provided in S.1958, most strikes for a closed shop or even for a preferential shop would by this Act in effect be declared to be for an illegal purpose, and hence would be enjoinable in many States." (Committee print, Senate Labor Committee, March 11, 1935, 74th Congress.)

**D. Judicial Interpretation**

This court as long as 14 years ago, recognized and applied the legislative histories of the Wagner and Taft-Hartley Acts to permit the state full leeway in the regulation of various "union security" devices.

The leading and clearly controlling decision is this Court's opinion in *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board,* (1949) 336 U.S. 301; 98 L. ed. 691; 69 S. Ct. 548; 23 LRRM 2402. The Wisconsin Employment Relations Board had ordered an employer to cease giving effect to a maintenance of membership clause in a collective bargaining contract on the ground that such clause was in violation of a Wisconsin statute. Both the plywood company and the union concerned contended the Wisconsin statute was repugnant to Section 8(3) of the Wagner Act and Sections 8(a)(3) and 14(b) of the Taft-Hartley Act.

While the case involved the power of a state to outlaw the maintenance of membership form of compulsory unionism, it actually dealt with a discharge for non-payment of union dues. In effect this is the very question raised in the *Schermerhorn* case.

This Court ruled that the history of Sections 8(a)(3) and 14(b) clearly indicated a Congressional intent to leave the states a free hand in the area of compulsory unionism.

Referring to Section 8(3) of the Wagner Act, the predecessor to 8(a)(3), this Court said (at page 307):

> "The short answer is that Section 8(3) merely disclaims a national policy hostile to the closed shop *or other forms of union-security agreement.* This is the obvious inference to be drawn from the choice of the words 'nothing in this Act . . . or in any other statute of the United States,' and it is confirmed by the legislative history." (Italics supplied).

Then taking up the Taft-Hartley Sections 8(a)(3) and 14(b), this Court declared on pages 313-14:

> "Other provisions of the Taft-Hartley Act make it even clearer than the National Labor Relations Act that States are left free to pursue their own more restrictive policies in the matter of union-security agreements. Because Sec. 8(3) of the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered, Sec. 14(b) was included to forestall the inference that federal policy was to be exclusive. . . .
>
> "It is argued, however, that the effect of this section is to displace State law which 'regulates' but does not wholly 'prohibit' agreements requiring membership in a labor organization as a condition of employment. But if there could be any doubt that the language of the section means that the Act shall not be construed to authorize any 'application' of a union-security contract, such as discharging an employee, which under the circumstances 'is prohibit-

ed' by the State, the legislative history of the section would dispel it."

This Court at least twice subsequent to its *Algoma* decision has cited it with approval. In *Weber* v. *Anheuser-Busch, Inc.*, (1955) 348 U.S. 468; 99 L. ed. 546; 75 S. Ct. 480; 35 LRRM 2637, the issue was federal preemption under the Taft-Hartley Act. This Court at page 477 explained its *Algoma* opinion saying it allowed a State to forbid the enforcement of a maintenance of membership contract, "Since nothing in the Wagner or Taft-Hartley Acts sanctioned or forbade these clauses, they were left to regulation by the State".

As recently as 1959, this Court again pointed out the special position occupied by the states under Section 14(b) in a footnote in *Teamsters Union* v. *Oliver*, 358 U.S. 283, 296; 3 L. ed. 2d 312; 79 S. Ct. 297; 43 LRRM 2374:

> "10. In *Algoma*, state law was allowed to operate to restrict a provision of a collective bargaining contract only after it was found after an exhaustive examination of the legislative history of the Wagner Act that Congress intended to leave the special subject of the legality of maintenance of membership clauses up to the States through Section 8(3) of that Act, 49 Stat. 452."

The petitioner union in the *Schermerhorn* case relies on the "plain meaning" rule of statutory construction to have "membership" construed literally. While there is nothing wrong with that rule of construction in an appropriate case, it has no place here. Sections 8(a)(3) and 14(b) were definitely construed to the contrary of the union's position by this Court 14 years ago. A settled and sound construction cannot be overcome by later application of the "plain meaning" rule of construction.

**E. Landrum-Griffin Act Legislative History**

Congress has had ample time and opportunity during the 14 years since the *Algoma* decision by this Court to "correct" it, if it felt that the Court was in error.

Not only has Congress failed to take such action; thereby, confirming the soundness of *Algoma*, but it specifically negated an attempt to permit the possibility of a type of "agency shop" clause when it enacted the 1959 Labor-Management Reporting and Disclosure Act (Landrum-Griffin), 73 Stat. 519, 29 USC 401.

The legislative history of the Landrum-Griffin Act shows again that Congress intended to leave compulsory unionism to the States. This is clearly brought out in a review of pertinent legislative history in the U. S. District Court of Nevada's opinion in *Amalgamated Association of Street Electric Railway Employees* v. *Las Vegas-Tonopah-Reno Stage Line, Inc.*, (1962) 202 F. Supp. 726; 49 LRRM 2732.

Like the present *Schermerhorn* case, the Nevada action was brought by a union against an employer for refusing to enforce an "agency shop" clause in the labor-management contract it signed with the union. The employer contended the "agency shop" clause was unlawful.

The court upheld the defendant's view that the Nevada right to work law prohibited an agency shop. In marshalling facts to support its decision, the court, among other things, searched the legislative history of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin) to find that the Congress specifically deleted language from a proposed bill that could have been interpreted as sanctioning agency shop clauses.

The court notes that, "On January 20, 1959, the so-called Kennedy-Ervin bill (S.505) was introduced in the Senate . . . . Section 112 of that bill made certain amendments to Section 302 of the Taft-Hartley Act.

Section 302(c)(4) was proposed to be amended so that it would exempt from the general prohibitions of Section 302 'money deducted from wages of employees in payment of *membership dues in or periodic payments* to a labor organization'" . . . (Italics supplied by the court).

The opinion points out that Senator Goldwater, ranking minority member of the Senate Labor and Public Welfare Committee, analyzed what he termed "major deficiencies in the labor reform bill". He said:

> "The bill permits the checkoff of fees paid in lieu of dues to a labor union. This tacitly recognizes that the so-called agency shop is lawful."

But when the Kennedy-Ervin bill and the House's Landrum-Griffin bill were sent to a joint Senate-House conference, the emerged proposal found the agency shop device eliminated. Senator Morse explicitly pointed this out. He explained:

> "The conference committee bill omits, however, the provision which is contained in the Kennedy-Ervin bill authorizing the checkoff of periodic payments in lieu of membership dues under so-called agency shop." 105 Cong. Rec. 18389 (daily ed. September 3, 1959); Vol. 2, Legislative History, page 1418.

The U.S. District Court for Nevada then clearly sums up its understanding of this portion of legislative history and the agency shop:

> "We are, therefore, of the opinion that the legislative history of the Labor-Management Reporting and Disclosure Act of 1959 makes clear that Congress wanted to do nothing which would lend any weight to any argument that it was willing to sanction the agency shop in states which had enacted right to work legislation. Furthermore, the actions of Congress in 1959, accord at least inferential support to the contention that Congress, in 1947, was of a mind to allow the States to ban what, under the federal statute, is realistically the equivalent of the union shop —the agency shop."

## V. SUMMARY AND CONCLUSION

*Amicus* has attempted to bring before the Court its interpretations of the various cases, statutes, and legislative history that are involved in this case.

We maintain that the Congress has not preempted the right of states to place restrictions upon union compulsion or union security. Congress has made clear its intent to reserve this area to the States in its three attempts to enact legislation affecting the national labor policy. The legislative history of the Wagner Act, the Taft-Hartley Act, and the Landrum-Griffin Act confirms this intent.

This Court also has so found, especially in its opinion in the *Algoma Plywood* case, discussed at length by *amicus*. The Supreme Court's construction in that case still controls.

For the reasons stated, *amicus* asks the Court to affirm the decision of the Supreme Court of Florida that the National Labor-Management Relations Act does not preempt the individual states from outlawing so-called agency shop clauses in collective bargaining contracts.

Respectfully submitted,

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## PROOF OF SERVICE

I, Harry J. Lambeth, one of the attorneys for the movants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the day of February, 1963, I served copies of the foregoing BRIEF AMICUS CURIAE on the several parties to the principal case as follows:

(1) On the petitioners, Retail Clerks International Association, Local 1625, AFL-CIO, and William Travis, president of Local 1625, by mailing a copy in a duly addressed envelope, with postage prepaid, to their attorney of record as follows: S. G. Lippman, Esquire, general counsel, De Sales Building, Connecticut and De Sales Street, Washington 6, D. C.

(2) On the respondents, Alberta Schermerhorn, Lois Devita, Joyce E. Thuro, and Larry Stark by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to their attorney of record as follows: Bernard B. Weksler, Esquire, 509 Industrial National Bank Building, Miami, 32, Florida.

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Harry J. Lambeth